

EMERGENCY RAIL SERVICES ACT OF 1970

DECEMBER 16, 1970.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Staggers, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 19953]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 19953) to authorize the Interstate Commerce Commission to provide financial assistance to certain railroads in order to preserve essential rail services, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert the following:

That this Act may be cited as the "Emergency Rail Services Act of 1970".

DEFINITIONS

SEC. 2. For the purposes of this Act—

- (1) "Secretary" means the Secretary of Transportation.
- (2) "Commission" means the Interstate Commerce Commission.
- (3) "Railroad" means any common carrier by railroad subject to part I of the Interstate Commerce Act (49 U.S.C. 1-27).
- (4) "Certificate" means certificates issued by trustees of a railroad pursuant to subsection 77(c)(3) of the Bankruptcy Act, as amended (11 U.S.C. 205(c)(3)).

FINANCIAL ASSISTANCE

SEC. 3. (a) The trustees of any railroad undergoing reorganization under section 77 of the Bankruptcy Act, as amended (11 U.S.C. 205), upon approval of the court, may apply to the *Secretary* for the guarantee of certificates. The *Secretary*, after consultation with the Commission, is authorized to guarantee such certificates upon findings in writing that—

- (1) cessation of essential transportation services by the railroad would endanger the public welfare;
- (2) cessation of such services is imminent;
- (3) there is no other practicable means of obtaining funds to meet payroll and other expenses necessary to provide such services than the issuance of such certificates;

- (4) such certificates cannot be sold without a guarantee;
 - (5) the railroad can reasonably be expected to become self-sustaining;
- and

(6) the probable value of the assets of the railroad in the event of liquidation provides reasonable protection to the United States.

The Secretary shall publish notice of his intention to make such finding in the Federal Register not less than fifteen days prior to such finding, give interested persons, including agencies of the Federal Government, an opportunity to submit written data, views, or arguments (with or without opportunity for oral presentation), and give consideration to the relevant matter presented. The Secretary for good cause shown and upon a finding that extraordinary circumstances warrant doing so may waive the requirements of the preceding sentence.

(b) As a condition to a guarantee, the Secretary, after consultation with the Commission, shall require that:

(1) the proceeds of the sale of certificates guaranteed under this Act will be used solely for meeting payroll and other expenses which, if not met, would preclude continued provision of essential transportation services by the railroad;

(2) other revenues of the railroad will be used, to the fullest extent possible, for such expenses;

(3) proceeds from the sale of assets will be devoted to the fullest extent possible to the provision of essential transportation services by the railroad; and

(4) in the event of actual or threatened cessation of essential transportation services by the railroad, the Secretary shall have the option to procure by purchase or lease trackage rights over the lines of the railroad and such equipment as may be necessary to provide such services by the Secretary or his assignee, and, in the event of a default in the payment of principal or interest as provided by the certificates, the money paid or expenses incurred by the United States as a result thereof shall be deemed to have been applied to the purchase or lease price. The terms of purchase or lease shall be subject to the approval of the reorganization court and the operation over the lines shall be subject to the approval of the Commission pursuant to the provisions of section 5 of the Interstate Commerce Act, but in no event shall the rendition of services by the Secretary or his assignee await the outcome of proceedings before the reorganization court or the Commission.

(c) The Secretary shall not guarantee any certificate unless the certificate is treated as an expense of administration and receive the highest lien on the railroad's property and priority in payment under the Bankruptcy Act. The rights referred to in the last sentence of section 77(j) of the Bankruptcy Act shall in no way be affected by this Act.

(d) A certificate under this Act shall bear interest at such per annum rate as the Secretary deems reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Federal Government; nor may its maturity date, including all extensions and renewals thereof, be later than fifteen years from the date of original issuance. The Secretary may prescribe such other terms and conditions as he deems appropriate. In each case, the Secretary shall consider the feasibility of requiring the railroad to dispose of nonrailroad assets as a condition to a guarantee.

(e) At any one time the outstanding aggregate principal amount of all certificates guaranteed under this Act shall not exceed \$125,000,000.

(f) The Secretary shall issue such rules and regulations as are appropriate to carry out the authority granted by this Act.

ACCESS TO CARRIER RECORDS

SEC. 4. The Secretary is authorized to, and shall as necessary, inspect and copy all accounts, books, records, memorandums, correspondence, and other documents of any railroad which has received financial assistance under this Act concerning any matter which may bear upon (1) the ability of such railroad to repay the loan within the time fixed therefor, (2) the interest of the United States in the property of such railroad, and (3) to insure that the purpose of this Act is being carried out.

AUTHORIZATION TO ISSUE OBLIGATIONS

SEC. 5. (a) To enable the Secretary to carry out his rights and responsibilities under section 3 of this Act, he is authorized to issue to the Secretary of the

Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. There are authorized to be appropriated to the Secretary such sums as may be necessary to pay the principal and interest on the notes or obligations issued by him to the Secretary of the Treasury.

(b) Any guarantee made by the Secretary under this Act shall not be terminated, canceled, or otherwise revoked, except as provided by the terms and conditions prescribed by the Secretary under section 3(d) of this Act; shall be conclusive evidence that such guarantee complies fully with the provisions of this Act, and of the approval and legality of the principal amount, interest rate, and all other terms of the certificates and the guarantee; and shall be valid and incontestable in the hands of a holder of a guaranteed certificate except for fraud or material misrepresentation on the part of such holder.

(c) The Attorney General shall take such action as may be appropriate to enforce any right accruing to the United States by reason of its having paid money or incurred expenses as a result of making such guarantees.

ASSISTANCE OF DEPARTMENTS AND OTHER AGENCIES

SEC. 6. (a) In carrying out the provisions of this Act the Secretary may use available services and facilities of other departments, agencies, and instrumentalities of the Federal Government with their consent and on a reimbursable basis, and shall consult with the Interstate Commerce Commission in carrying out the provisions of this Act.

(b) Departments, agencies, and instrumentalities of the Federal Government shall exercise their powers, duties, and functions in such manner as will assist in carrying out the provisions of this Act.

COURT SUPERVISION

SEC. 7. In addition to other duties prescribed by section 77 of the Bankruptcy Act, the court shall maintain supervision of the expenditure of funds obtained pursuant to section 3 for the purpose of assuring that such funds are used solely for purposes set forth in subsection (b) of such section, shall make periodic findings regarding such expenditures, and shall report those findings to the Secretary.

AUDIT

Sec. 8. The Comptroller General of the United States, or any of his duly authorized representatives, shall have access to such information, books, records, and documents as he determines necessary effectively to audit financial transactions and operations carried out by the Secretary in the administration of this Act. The Comptroller General shall make such reports to the Congress on the results of any such audits as are appropriate.

GUARANTEE FEES

Sec. 9. The Secretary shall prescribe a guarantee fee in connection with each loan guaranteed under this Act which shall be collected from railroad upon repayment of the loan guaranteed. Such fee shall be in an amount that the Secretary estimates to be necessary to cover the administrative costs of carrying out the provisions of this Act with respect to such loan. Sums realized from such fees shall be deposited in the Treasury as miscellaneous receipts.

REPORTS

Sec. 10. The Secretary shall make an annual report to the President and the Congress with respect to his activities pursuant to this Act, including an avaluation of the financial conditions of railroads which have outstanding certificates guaranteed under this Act. The Secretary shall also make a report to the President and the Congress on the financial condition of each railroad having a loan guaranteed under this Act ninety days after the making of such guarantee and annually thereafter throughout the existence of such loan.

2. Amend the title so as to read: "A bill to authorize the Secretary of Transportation to provide financial assistance to certain railroads in order to preserve essential rail services, and for other purposes."

PURPOSE OF THE LEGISLATION

This emergency bill is designed to prevent a clear threat to the public welfare. The nation's largest transportation system, Penn Central, will cease within a matter of weeks, with an overwhelming impact to be felt in every region of the United States. Three other railroads, serving critically important centers in the Northeast, are in perilous condition. All are bankrupt. Their survival so tenuously hangs in the balance that the severity of this winter could bring them to a permanent halt.

At jeopardy is utility power to 74 million people, foodstuff to eight of the nation's largest cities and major movements of iron ore, steel and other commodities basic to the economy.

The legislation is an interim measure to avert an immediate crisis. It will reach only essential rail services which now face cessation. And it will reach them only when self-help can no longer find the cash needed to continue.

HEARINGS

Faced with persuasive communications that some action on the part of the Congress would have to be taken in the Ninety-first Congress to relieve a critical and urgent cash shortage which the Penn Central and smaller railroads are sustaining at this time, public hearings were set before the Subcommittee on Transportation and Aeronautics for December 15, 1970. At that time testimony was received from Messrs. Willard Wirtz, George P. Baker, Richard C. Bond, Jervis Langdon, Jr., Trustees; William H. Moore, President; Robert Blanchette, Counsel for the Trustees of the Penn Central Transportation Company; Samuel Hellenbrand, President, Pennsylvania Company; and John Guest, Kuhn, Loeb and Company; Honorable John A. Volpe, Secretary of the Department of Transportation, James M. Beggs, Under Secretary, Charles D. Baker, Deputy Under Secretary; and Carl Lyon, Acting Federal Railroad Administrator; and Hon. Dale W. Hardin, Acting Chairman of the Interstate Commerce Commission, accompanied by his staff.

Mr. Wirtz, a former Secretary of the Department of Labor, and his associates in their testimony presented a concise, explicit, and thoroughly convincing description of the unfortunate, current status of the Penn Central Transportation Company. In his judgment, without equivocation, the Penn Central must have some financial inflow or it will be forced to cease operations on or about January 8, 1971.

On the record his position was corroborated not only by his asso-

ciates but also by Secretary Volpe. These witnesses were joined in the strong recommendation for emergency action at this time by Acting Chairman Dale W. Hardin of the ICC. The Subcommittee members queried the witnesses extensively with particular emphasis on any conceivable, possible alternatives. Again the testimony was most convincing that Congressional relief must be afforded now. Thus, despite the late date in this session of the Ninety-first Congress the hearings were urgently needed and were completed.

COMMITTEE ACTION

The legislation was brought before the Subcommittee on Transportation and Aeronautics on December 16, 1970, and after full consideration was unanimously ordered reported to the Committee on Interstate and Foreign Commerce with amendments. These amendments were drawn with the intent of affording the fullest possible measure of protection to the taxpayers of the United States. The full committee also on December 16, 1970, considered the bill as reported by the subcommittee and ordered it favorably reported.

Subsequent to the December 15 hearings under date of December 16, 1970, a statement in opposition was submitted for the Board of Directors of the Penn Central Company (the parent or holding company which is the sole stockholder of the Penn Central Transportation Company), and the views expressed in this statement were considered by the subcommittee and by the full committee in their deliberations.

BACKGROUND AND NEED

Role of rail transportation in the Nation's economy

The railroads constitute the backbone of our Nation's transportation system. They operate over a 207,000 mile system, serving more than 50,000 communities. During 1969, over 788 billion ton miles of freight was moved over this system—or approximately 41% of the total intercity freight movement. Stated in other terms, the transportation services performed by the railroads in 1969 produced \$11.4 billion in gross revenues, moved 28,292,000 freight car loads, and transported 295,880,000 passengers.

The dependence of certain sectors of industry on railroads for the delivery of key inputs of raw materials or components is of prime importance. The rate of industrial production is determined by the level of raw material inventories they hold and the rate at which the inventories can be replenished. Most of the goods producing industries in the United States are dependent on rail for from 50 to 80 percent of their key input deliveries.

In addition to bulk and raw materials, the railroads transport:

- 46 percent of our meat and dairy products
- 74 percent of our canned and frozen foods
- 71 percent of our household appliances
- 76 percent of our automobiles and automobile parts
- 78 percent of our lumber and wood
- 40 percent of our furniture
- 63 percent of our chemicals
- 68 percent of our primary metal products
- 86 percent of our pulp and paper.

Finally, the railroads move almost 40 percent of our national defense traffic.

The efficient movement of freight by rail is dependent upon all parts of the system functioning as a unit. The malfunction of any part can disrupt the entire system. The Penn Central affords a prime example of the interdependency of the system. It interchanges with 164 railroads at 1,088 points! Many west coast products move to eastern distribution or processing centers served exclusively by the Penn Central.

Penn Central is also the nation's largest transportation company, with some 20,000 miles of lines spread over 16 States, the District of Columbia, and two provinces in Canada. Its operating territory stretches from Chicago and St. Louis to Boston, New York City, Philadelphia, Baltimore, and Washington. This area contains half the nation's population, and more than half of its manufacturing plants. In 1969, the Penn Central moved 25 percent of all steel shipped by any mode; 17 percent of all coal produced; and 21 percent of all iron ore. The Penn Central is also the largest single carrier of mail in the United States, earning 31 percent of the total mail revenue earned by Class I railroads in 1969.

It is clear that the maintenance of a sound rail transportation system and a healthy national economy is dependent upon continued performance of essential rail service by all segments of the system. Railroads in reorganization, which perform essential transportation service and are faced with severe cash shortages must not be allowed to terminate those services and liquidate their assets. Emergency measures are clearly necessary.

The Penn Central Transportation Company is the product of the merger of two railroads in trouble—a merger considered by the Interstate Commission and, on review, sustained by the courts. *Penn Central Merger Cases*, 389 US 486 (1968)

What brought the enterprise from the optimum of only two years ago to the financial demise experienced this year is a matter that cannot be explored fully at this time. The Interstate Commerce Commission has undertaken an investigation of all phases of the operations, accounts, and financial transactions of the Penn Central Transportation Company and its affiliates. Another inquiry has been begun by the Securities and Exchange Commission. Both agencies have appeared before this Committee, and the Committee anticipates obtaining from them full cooperation in exposing and detailing the circumstances that led to the bankruptcy of that railroad. The Investigations Subcommittee of the Committee on Interstate and Foreign Commerce is pursuing an inquiry into the railroad's affairs and the circumstances leading to its financial collapse.

What matters at this point is that we are reliably informed that, unless there is immediate infusion of financial aid, the Penn Central Transportation Company will terminate sometime in January, for want of operating cash. Only the Government guarantee of certificates to be sold by the Trustees of the railroad would permit, the operations.

The Central Railroad of New Jersey, although not nearly as extensive in the breadth of its operations, is in financial straits no less demanding of assistance than the Penn Central. Absent immediate infusion of cash, which may or may not be forthcoming from the State

of New Jersey, that railroad, too, will be forced to terminate operations on or about the first of the year.

The Boston & Maine and the Lehigh Valley are among other railroads undergoing reorganization under the Bankruptcy Act, and their operations also are imperiled by escalating operating costs not offset by increased revenues.

On June 21, 1970, the directors of PCTC filed a petition for reorganization under Section 77 of the Bankruptcy Act in the United States District Court for the Eastern District of Pennsylvania. The petition stated that the railroad had insufficient cash on hand to meet its debt obligations and continue current operating expenses.

The railroad has been operating under Bankruptcy procedures since that date, under the general supervision of Federal Judge John P. Fullam in Philadelphia. Four Trustees—George P. Baker, Richard C. Bond, Jervis Lansdon, Jr., and Willard Wirtz—were named and have conducted the railroad's affairs since late July.

The Bankruptcy Act allows the Court to stay the hand of most pre-bankruptcy creditors who would otherwise be able to collect on their debt. The principal statutory exceptions are employees who have been injured in the line of duty and holders of debt on equipment who retain a right of repossession in the event of default on equipment debt.

In the last six months of 1970, these Court-sanctioned deferrals will amount to approximately \$35,000,000. This includes over \$30,000,000 in taxes to state, local and municipal authorities with an already substantial impact on such functions as public education.

On this spartan basis, and despite a lengthy strike against a major automobile shipper, the railroad has been able to maintain a daily cash balance averaging between \$20–\$25 million.

Because a railroad's cash can fluctuate by as much as \$10 million to \$15 million a day, in the ordinary course of business, a \$25 million balance represents a dangerous minimum.

On December 15, the Trustees testified that even operating under wage levels in effect prior to Joint Resolution 220, their cash reserves would erode from about \$30 million (as of that date) to about zero in late March. These estimates assume a moderate increase in freight revenues as well as a "normal" winter without the severity which befell the railroad in 1969–70.

Recognizing the margin of error in any estimate, the Trustees now foresee a shortage of cash at the end of January of \$5 million. Retroactive pay for 1970—due some time in February—would add an additional cash demand of approximately \$50 million, for which there is now no prospect of payment. Even assuming a business could operate on a minus cash balance, the railroad anticipates a deficit in cash of \$68 million as of March 31. The Trustees estimated that approximately \$100 million of additional funds would be needed to survive the first quarter with a minimal necessary cash balance to abide contingencies.

COST OF LEGISLATION

This legislation does not necessarily require the expenditure of any funds from the Federal Treasury. It does commit the Federal Government to a liability of up to \$125 million if loans guaranteed under this legislation are not repaid by the debtor.

MINORITY VIEWS

In Committee, we questioned this legislation but not because the problem it is intended to solve is not urgent and serious. We are told, on very short notice, that the Congress is confronted with a choice of bailing the Penn Central out of its financial troubles or allowing the complete collapse of the Nation's largest rail carrier. Certainly, these alternatives are unpleasant. We recognize that the continuing operation of Penn Central is essential to the Nation's commerce. There can be no argument that the public interest in this situation would appear to demand Federal action. But what kind of action?

The criticism we have of this legislation is that it is only another lurch in our staggering crisis to crisis in dealing with what has been called the "Penn Central mess."

We are now told that this railroad cannot continue to operate for more than a few weeks unless the Federal Government provides financial guarantees. We are also told that the problems of this railroad are so difficult that in a few months we will be asked to increase these guarantees. There is no element of a permanent solution here for a chronically ill industry with many acute problems.

It is equally clear that we may be starting an exercise in futility. More and more Federal financial support may be required to meet the gigantic losses this private company is incurring. We should not plunge into such a commitment without more knowledge or at least some determination to explore why this situation has developed and what steps can be taken to correct it. The Federal response, so far, has been superficial and it is time to stop wishing the problem would evaporate.

Regardless of immediate bail-out requirements, we need to have more answers which are not now available. We need to know what cost reduction programs have been initiated and what over-all efficiency policies have been instituted to reduce losses. We need to know why other assets of the holding company are not available to meet the financial problems of Penn Central. We need to know why the company's trustees could not have indicated earlier that this crisis was impending.

As matters now stand, we find ourselves being stampeded into action with mighty few facts and no real opportunity to examine the supporting data. We cannot be sure that other alternatives are not available within the corporate structure of this huge and bewildering corporation. This legislation is a hand-wringing operation and we are asked to trust to luck that things will get better. In our opinion, the public's stake in this question requires positive action by management and the Government beyond simple transfusions of public money. Again, we are trying to treat the symptoms and ignoring the disease.

Even though the present crisis may require that help be provided, we owe it to the American people to be better prepared to find more effective and more permanent answers to the afflictions of this company and its industry.

JAMES T. BROYHILL.
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